



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0507; FRL-9981-77-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; NO_x Ozone Season Emissions Caps for Non-Trading Large NO_x Units and Associated Revisions to General Administrative Provisions and Kraft Pulp Mill Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision (Maryland SIP Revision #18-03) pertains to a new Maryland regulation that establishes ozone season nitrogen oxides (NO_x) emissions caps and other requirements for large non-electric generating units (non-EGU) in Maryland and includes associated revisions to two other Maryland regulations. The revisions will enable Maryland to meet NO_x reduction requirements related to interstate transport of pollution that contributes to other states' nonattainment or interferes with other states' maintenance of the ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0507 at <http://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: On May 15, 2018, the State of Maryland, through the Maryland Department of the Environment (MDE), submitted for approval into the Maryland SIP new Code of Maryland Regulation (COMAR) 26.11.40 – *NO_x Ozone Season Emission Caps for Non-Trading Large NO_x Units* and revisions to two regulations presently included in the Maryland SIP, COMAR 26.11.01.01 – *General Administrative Provisions* and COMAR 26.11.14 – *Control of Emissions from Kraft Pulp Mills* to EPA.

I. Background

In October 1998 (63 FR 57356), EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"—commonly called the NO_x SIP Call. The NO_x SIP Call, issued pursuant to Section 110 of the CAA, was designed to mitigate significant transport

of NO_x, one of the precursors of ozone. EPA developed the NO_x Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_x SIP Call. The NO_x Budget Trading Program allowed electric generating units (EGUs) greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as “large non-EGUs”, to participate in a regional NO_x cap and trade program. The NO_x SIP Call also established specific reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion (IC) engines. On January 10, 2001 (66 FR 1866), EPA approved two Maryland regulations, COMAR 26.11.29 – *NO_x Reduction and Trading Program*, and COMAR 26.11.30 – *Policies and Procedures Relating to Maryland’s NO_x Reduction and Trading Program*, into the Maryland SIP as meeting the requirements of the NO_x SIP Call. Under the approved trading program, large EGUs and large non-EGUs in Maryland participated in a regional cap and trade program that was administered by EPA.

On May 12, 2005, (70 FR 25162), EPA promulgated the Clean Air Interstate Rule (CAIR) to address transported emissions that significantly contributed to downwind states’ nonattainment and maintenance of the 1997 ozone and fine particulate matter (PM_{2.5}) NAAQS. CAIR required 28 states, including Maryland, to reduce emissions of NO_x and sulfur dioxide (SO₂), which are precursors to ozone and PM_{2.5}. Under CAIR, EPA developed separate cap and trade programs for annual NO_x, ozone season NO_x, and annual SO₂ emissions. On April 28, 2006 (71 FR 25328), EPA also promulgated federal implementation plans (FIPs) requiring the EGUs in each affected state, but not large non-EGUs, to participate in the CAIR trading programs. States could comply with the requirements of CAIR by either remaining on the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that included as trading sources EGUs and the non-

EGUs that formerly traded in the NO_x Budget Trading Program under the NO_x SIP Call. EPA discontinued administration of the NO_x Budget Trading Program in 2009 upon the start of the CAIR trading programs.¹ The NO_x SIP Call requirements continued to apply, however, and EGUs that were formerly trading under the NO_x Budget Trading Program continued to meet their NO_x SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. States needed to assess their NO_x SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met either through submission of a CAIR SIP or other NO_x regulation. EPA has implementing regulations for the NO_x SIP Call at 40 CFR 51.121.

In Maryland, Luke Paper Mill (formerly the Westvaco pulp and paper mill) was the only facility with non-EGUs that were affected by the NO_x SIP Call and which participated in the NO_x Budget Trading Program. When the CAIR NO_x Ozone Season trading program replaced the NO_x Budget Trading Program, Maryland adopted the CAIR program as it applied to large EGUs, but chose not to include the non-EGUs at Luke as participants in the CAIR NO_x Ozone Season trading program.² Instead, in 2010, Maryland adopted COMAR 26.11.14.07 – *Control of Emissions from Kraft Pulp Mills*, which, among other requirements, included provisions that address the NO_x SIP Call non-EGU requirements in Maryland through a NO_x ozone season tonnage cap of 947 tons for the Luke non-EGUs and monitoring, recordkeeping, and reporting in

¹ CAIR was subsequently vacated and remanded. See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified by 550 F.3d 1176 (remanding CAIR). CAIR was replaced with the Cross-State Air Pollution Rule, or CSAPR (76 FR 48208, August 8, 2011), which, after legal challenges, was implemented starting in January 2015. The NO_x Ozone Season Trading Program under CSAPR was replaced in Maryland and most other states by a new trading program for ozone season NO_x under the CSAPR Update rule in January 2017 (81 FR 74504, October 26, 2016).

² CAIR became obsolete upon implementation of the CSAPR program. Maryland subsequently took action rescinding its CAIR regulation (COMAR 26.11.28), and submitted a SIP revision to EPA which sought removal of the regulation in its entirety from the approved Maryland SIP. On July 17, 2017 (82 FR 32641), EPA approved the SIP revision removing the CAIR regulation from Maryland's SIP.

accordance with 40 CFR part 75. EPA conditionally approved COMAR 26.11.14.07 into the Maryland SIP on August 30, 2016 (81 FR 59486) and took final approval on July 17, 2017 (82 FR 32641).

Subsequent to adoption of COMAR 26.11.14.07, MDE determined that additional applicable units have either started operation or were previously not subject but have become subject to the requirements for non-EGUs under the NO_x SIP Call as the units are greater than 250 MMBtu/hr. A review of the applicability of the NO_x SIP Call to large non-EGUs in the State showed that there are three additional facilities having non-EGUs that are covered under the NO_x SIP Call. MDE adopted new regulation COMAR 26.11.40 to reallocate the NO_x emissions cap among the affected sources, and concurrently revised COMAR 26.11.14.07 to reflect a reduced cap for Luke. The NO_x annual emissions cap for Maryland established for the NO_x SIP Call is 1013 tons per year of NO_x, as established by EPA in 40 CFR part 97, Subpart E, Appendix C.

II. Summary of SIP Revision and EPA Analysis

On May 15, 2018, Maryland, through MDE, submitted for inclusion in the Maryland SIP new regulation COMAR 26.11.40 – NO_x *Ozone Season Emission Caps for Non-trading Large NO_x Units*, and associated revisions to COMAR 26.11.01.01 – *General Administrative Provisions*, and COMAR 26.11.14 – *Control of Emissions from Kraft Pulp Mills*.

New COMAR 26.11.40 establishes NO_x ozone season tonnage caps and NO_x monitoring requirements for large non-EGUs in the State that are not covered under the Cross-State Air Pollution Rule (CSAPR) to meet requirements of the NO_x SIP Call. Regulation .01 under COMAR 26.11.40 defines the terms used in COMAR 26.11.40, including “boiler”, “combined cycle system”, “combustion turbine”, “fossil-fuel”, “fossil fuel-fired”, “new unit”, “new unit set-aside”, “non-trading large NO_x unit”, and “ozone season”. The definition of non-trading large

NO_x unit in Regulation .01 lists two categories of sources: 1) non-EGUs with a maximum design heat input greater than 250 MMBtu/ hr, and 2) fossil fuel-fired EGUs serving a generator with a nameplate capacity greater than 25 megawatt output. Maryland explains its intent that these definitions apply to non-EGUs and EGUs as defined for purposes of the NO_x SIP Call as amended.³ In addition to the definitions of non-trading large NO_x unit, Maryland clarifies its intent by specifically listing in Regulation .02 all units in the State that currently meet the definitions. Regulation .01 also clarifies that non-EGUs subject to this rule are units that are not already subject to the CSAPR NO_x Ozone Season Group 2 Trading Program under 40 CFR Part 97, Subpart EEEEE.

Regulation .02 under COMAR 26.11.40 lists the currently affected non-EGUs meeting the definition of “non-trading large NO_x unit” (shown in the following table), and includes a provision that any new unit installed after May 1, 2018 or an existing unit that is modified such that it meets the definition of a large non-EGU will become subject to the requirements of COMAR 26.11.40. Regulation .03 under COMAR 26.11.40 establishes the NO_x annual tonnage caps for each source. The affected units and their NO_x ozone season caps are as follows:

Facility	Unit	NO_x Ozone Season Cap (tons)
American Sugar Refining	C6	24
Dominion Energy Cove Point LNG	Frame 5-1 (Turbine S009) Frame 5-2 (Turbine S010) Frame 7-A, Frame 7-B Aux. A, Aux B	214
Luke Paper Mill	24, 25, and 26	656
National Institutes of Health	5-1156	23
New unit set-aside		96
Total		1013

³ The definitions for non-EGUs and EGUs are set forth in the preamble to the April 2004 NO_x SIP Call amendments. See 69 FR 21604 and 21616, April 21, 2004.

Regulation .03 also establishes a 96 ton set aside for new units or modified existing units. The total, 1013 tons of NO_x, is consistent with the portion of the overall Maryland NO_x Budget Trading Program budget for large non-EGUs.⁴ Regulation .03 stipulates that the combined NO_x ozone season emissions from units subject to COMAR 26.11.40 may not exceed 1013 tons. Regulation .04 requires continuous emissions monitoring (CEM) of NO_x emissions at affected units in accordance with 40 CFR part 75, Subpart H, as required by 40 CFR 51.121(i)(4),⁵ maintenance of records and submittal of reports in accordance with 40 CFR part 75, and submittal of CEMs data to the State on a quarterly basis.

To meet NO_x SIP Call requirements and conform to COMAR 26.11.40, Maryland revised regulation .07A of COMAR 26.11.14 *Control of emissions from Kraft Pulp Mills* to remove the 947 ton ozone season NO_x cap that originally applied to the Luke Mill. A new provision in COMAR 26.11.14 establishes Luke's lower NO_x cap via a cross reference to Luke's 636 ton per year cap in COMAR 26.11.40.03. Regulation .07B removes the requirements for an owner or operator of a kraft pulp mill that exceeds the emission limit(s) specified in COMAR 26.11.14 to acquire one ozone season NO_x allowance for every ton of NO_x emissions over the limits to demonstrate compliance, and requires compliance instead to be demonstrated with the 636 ton per year cap via a CEMs meeting 40 CFR part 75. Maryland removed the provision for paper

⁴ Maryland's NO_x Budget Trading Program regulations included an overall budget of 15,466 tons for EGUs and non-EGUs. See, e.g., The NO_x Budget Trading Program: 2008 Highlights (October 2009) at 10, available at <https://www.epa.gov/airmarkets/nox-budget-trading-program-historical-reports>. While most of the overall budget was allocated directly to EGUs and non-EGUs (those shares were 13,793 tons and 947 tons, respectively), a 726-ton portion was not assigned to either sector, but instead was placed in set-asides. To identify the portion of the overall 15,466-ton budget attributable to non-EGUs that would be an appropriate cap for its replacement non-EGU rule, Maryland has therefore used the 1013-ton non-EGU portion of the overall budget of 15,532 tons established for Maryland's EGUs and non-EGUs under a different federal rule promulgated contemporaneously with the NO_x SIP Call pursuant to CAA section 126. See 40 CFR part 97, subpart E, appendix C. In the absence of an express division of the State's overall NO_x Budget Trading Program budget between EGUs and non-EGUs, EPA believes the State's approach to identifying an appropriate cap for its replacement non-EGU rule is reasonable.

⁵ EPA's regulations implementing the NO_x SIP Call are in 40 CFR 51.121.

mills such as Luke Mill to acquire additional NO_x allowances in order for the sources in the State to remain under Maryland's total NO_x ozone season cap for the NO_x SIP Call.

Correspondingly, Maryland also revised a provision of COMAR 26.11.01- *General Administrative Provisions* to remove the definition for "NO_x ozone season allowance" which is no longer necessary because the revisions to COMAR 26.11.14 remove the requirement for fuel burning equipment at Luke to purchase NO_x ozone season allowances for any exceedance over its specified limits.

EPA finds that this May 2018 SIP submittal meets Maryland's NO_x SIP Call requirements (including requirements in CAA section 110 and 40 CFR 51.121) for non-EGUs through: 1) new regulation COMAR 24.11.40 which updates the State's requirements to include all currently applicable large non-EGUs and any new non-EGUs under the NO_x SIP Call; 2) the specified state-wide ozone season NO_x emissions cap of 1013 tons which is consistent with the portion of the overall Maryland NO_x emissions budget under the NO_x Budget Trading Program attributable to non-EGUs, and 3) through the 40 CFR Part 75 monitoring, recordkeeping and reporting requirements which apply for the affected non-EGUs. In addition, the revisions remove the ability of kraft pulp mills that exceed their NO_x limits and caps to comply by purchasing or otherwise acquiring NO_x allowances from EPA's ozone season NO_x trading program by removing these provisions in COMAR 26.11.14 and 26.11.01. The removal of the provisions allowing purchase of additional allowances removes the potential for increased local NO_x emissions.

The May 15, 2018 Maryland SIP submittal does not result in increased NO_x emissions, and therefore has no impact on any requirements related to attainment, reasonable further progress, or any other NAAQS requirements under the CAA. The submittal therefore meets section 110(l)

of the CAA.

III. Proposed Action

EPA's review of this material indicates that Maryland's May 18, 2018 SIP revision submittal (Maryland SIP Revision #18-03) is approvable in accordance with CAA section 110. For the reasons noted previously, EPA is proposing to approve the Maryland SIP revision submitted on May 15, 2018. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed action, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference new Maryland regulation COMAR 26.11.40 and associated revisions to COMAR 26.11.01 and COMAR 26.11.14.07. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action proposing approval of Maryland regulation COMAR 26.11.40 and associated revisions to other COMAR regulations does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides

Authority: 42 U.S.C. 7401 et seq.

Dated: July 24, 2018.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

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